

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., et al.)	
)	
Defendants.)	
)	

**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE EXPERT
TESTIMONY BASED ON BACTERIAL ANALYSES CONDUCTED IN VIOLATION
OF EPA, USGS AND OKLAHOMA STANDARDS (Dkt. No. 2090)**

Plaintiffs fail to overcome Defendants' showing that the opinions of Plaintiffs' experts regarding bacterial levels in the surface waters of the Illinois River Watershed ("IRW") are unreliable and should be excluded. As demonstrated in Defendants' *Motion to Exclude Expert Testimony Based on Bacterial Analyses Conducted in Violation of EPA, USGS, and Oklahoma Standards*, Dkt. No. 2090 (May 18, 2009) (the "Motion"), Plaintiffs' experts base their opinions on surface water tests conducted in violation of "hold time" standards established by the Environmental Protection Agency ("EPA"), the U.S. Geological Survey ("USGS"), and the State of Oklahoma's Department of Environmental Quality ("ODEQ"). Mot. at 1–3, 4–13.

I. Plaintiffs' Undisclosed Expert Opinions Cannot be Used to Oppose Defendants' Motion and Should be Disregarded

This Court has repeatedly issued orders directing Plaintiffs to comply with the Court's deadlines for the production of data and expert analyses. *See, e.g.*, Dkt. Nos. 1787 (Oct. 28, 2008); 1839 (Jan. 29, 2009); 1842 (Jan. 29, 2009). Plaintiffs have disregarded those rulings in their recently-filed summary judgment and *Daubert* briefs. With those briefs, Plaintiffs have filed literally hundreds of pages of new and previously undisclosed expert opinions and analyses, some of which rely on new data or make new factual assertions about Plaintiffs' work. *See Defendants' Motion to Strike Plaintiffs' New and Undisclosed Expert Opinions*, Dkt. No. 2241 (Jun. 17, 2009) (providing examples of the new and undisclosed opinions, some from previously-undisclosed experts). These new expert opinions cover a wide variety of topics and have created a significant problem for the Defendants and the Court as discovery is closed, Defendants' expert reports have been submitted, and Defendants have had no opportunity to question Plaintiffs' experts on these new expert opinions, much less prepare a response.

Plaintiffs' Response to Defendant's Motion is part of this problem. Rather than responding with material from previously disclosed expert reports or testimony, Plaintiffs'

Response relies on new expert declarations filed as exhibits to the Response. These new declarations contain opinions specifically designed to shore up Plaintiffs' faulty bacterial analyses by suggesting that Plaintiffs followed acceptable sampling standards and/or that it does not matter if they did not. *See generally State of Oklahoma's Opposition to Defendants' Motion to Exclude Expert Testimony Based on Bacterial Analyses Conducted in Violation of EPA, USGS, and Oklahoma Standards*, Dkt. No. 2108 (Jun. 5, 2009) (the "Response"), Exs. 1 (Harwood), 2 (Olsen) (declarations containing expert opinion and analyses not disclosed in previous expert reports).

Although Plaintiffs only recently submitted these new expert opinions, the issue of compliance with the hold times mandated by EPA, USGS, and the State of Oklahoma has been an issue in this case for more than a year. For example, on February 8, 2008, Defendants produced the expert report of Dr. Samuel Myoda and Dr. Mansour Samadpour as part of the proceedings on Plaintiffs' motion for a preliminary injunction. *See* Ex. 1. In that expert report, Drs. Myoda and Samadpour stated that: "Issues such as hold time (normally included in the standard method) must be strictly adhered to or the results are invalid, e.g. exceeding the hold time on water samples that are being analyzed for bacteria concentrations could lead to higher counts due to regrowth." *Id.* ¶ 16. Drs. Myoda and Samadpour further noted that, "[i]n approximately 60% of the water samples [available at that time], the 6 hour hold time mandated by the EPA for recreational water being tested for indicator bacteria (*E. coli*, enterococcus) was violated, in many cases by one to two days; therefore, this data is unreliable." *Id.* ¶ 17.

Although the Plaintiffs were under an obligation to consider the hold-time requirements (which are promulgated by, among others, the State of Oklahoma itself), this testimony put them on notice, even if they had previously overlooked the issue, that their failure to abide by the established hold-time standards would be an issue in this case.

Dr. Myoda discussed this issue further in his expert report on the merits of the case. He repeated his admonition that “hold time[s] ... must be strictly adhered to or the results are invalid, e.g. exceeding the hold time on water samples that are being analyzed for bacteria concentrations could lead to higher counts due to regrowth.” Mot. Ex. 11 at 10. After reviewing “approximately 1,700 water sample records” that were then available from Plaintiffs’ testing, he concluded that “over 72% exceeded the 6 hour hold time mandated by the EPA for recreational water being tested for indicator bacteria (*E. coli*, enterococcus) ..., in many cases by one or two days. In no instance did the Plaintiffs exclude data derived from samples that did not meet the 6 hour hold time. Therefore, the conclusions based on these data are unreliable.”¹ *Id.* at 10, 12–13. As discussed below, Defendants also raised the issue of compliance with hold times at the deposition of Plaintiffs’ expert Dr. Roger Olsen.

Despite the fact that this issue has been at the forefront of the case for more than a year (and is a well-established requirement in the scientific field, *see* Mot. at 5–6), Plaintiffs apparently did not develop their own expert opinions on this subject either through deposition, trial testimony at the preliminary injunction hearing, or in the many expert reports Plaintiffs disclosed between the time the preliminary injunction hearing concluded and the deadline for Plaintiffs’ expert disclosures. In short, Plaintiffs’ experts made little attempt to justify their excessive departures from the required hold times. Now, realizing that the bulk of their water testing violates the standards set out by EPA, USGS, and Plaintiffs’ own client, the State of Oklahoma, Plaintiffs have submitted numerous previously undisclosed expert opinions as post-hoc justifications for their faulty sampling analyses. As explained elsewhere, the Court should not allow Plaintiffs to disregard the rules governing expert disclosures. *See* Dkt. No. 2241. This

¹ As is plain, Plaintiffs’ suggestion that Dr. Myoda does not embrace the 6-hour hold time standard adopted by EPA, USGS, and ODEQ is flatly wrong. *See* Resp. at 11 n.9.

is precisely the type of improper attempt to “strengthen or deepen” original expert opinions that this Court previously concluded exceeded the bounds of permissible expert supplementation. Dkt. No. 1839. The federal rules do not permit experts to “cover failures of omission because the expert did an inadequate or incomplete preparation.” *Akeva, LLC v. Mizuno Corp.*, 212 F.R.D. 306, 310 (M.D.N.C. 2002); *accord Cohlmia v. Ardent Health Servs., LLC*, 254 F.R.D. 426 (N.D. Okla. 2008); *Palmer v. Asarco Inc.*, 2007 WL 2254343, at **2–4 (N.D. Okla. Aug. 3, 2007).

Judges routinely set case deadlines, such as the deadline for Plaintiffs to produce their expert reports. Those deadlines must be respected to avoid prejudice to the parties and the Court. “Ignoring deadlines is the surest way to lose a case. Time limits coordinate and expedite a complex process; they pervade the legal system, starting with the statute of limitations. Extended disregard of time limits (even the non-jurisdictional kind) is ruinous.” *United States v. Golden Elevator, Inc.*, 27 F.3d 301, 302 (7th Cir. 1994) (quoting *Nw. Nat’l Ins. Co. v. Baltes*, 15 F.3d 660, 663 (7th Cir. 1994)). The federal courts have repeatedly warned against “trial by ambush.” As the Sixth Circuit stated in *Val-Land Farms v. Third Nat’l Bank*, 937 F.2d 1110 (6th Cir. 1991), parties “are not free to present a moving target, thereby making the courts (both us and the district court) as well as their opponent guess at the nature of the claim presented to the court.” *Id.* at 1113.

In light of these rules, the federal courts have established a test for evaluating attempts to change a party’s expert case at the last minute. The party seeking to make a last-minute change in expert evidence bears the burden of showing that: (1) substantial justification exists for the Court to allow the changes; or (2) the changes are harmless to Defendants. *Okupaku v. Am. Airlines, Inc.*, 2007 WL 3511917, at **1–2 (S.D. Fla. Nov. 14, 2007); *Trustees of Painters Union Deposit Fund v. Interior/Exterior Specialist, Co.*, 2007 WL 4119020, at **1–3 (E.D. Mich. Nov.

16, 2007); *Avance v. Kerr-McGee Chemical LLC*, 2006 WL 3484246, at **1–7 (E.D. Tex. Nov. 30, 2006); *Deshazo v. Estate of Clayton*, 2006 WL 1794735, at **12–13 (D. Idaho Jun. 28, 2006). This standard applies regardless of whether the deadline was set by the Court, by Rule 26, or whether the prejudice flows from a discovery failure. *See Trustees of Painters Union*, 2007 WL 4119020, at **1–3 (court-ordered deadline); *Avance*, 2006 WL 3484246, at **6–7; *Norbrook Labs. Ltd. v. G.C. Hanford Mfg. Co.*, 297 F. Supp. 2d 463, 480–81 (N.D.N.Y. 2003).

Plaintiffs fail to meet either of these standards. There is no justification for the fact that Plaintiffs have supported their recent briefs with hundreds of pages of new expert declarations, based on work undertaken after the expert disclosure deadlines had already passed. The prejudice to Defendants is clear. Defendants have not had an opportunity to test through discovery or otherwise the factual assertions and expert opinions offered in Plaintiffs’ new declarations. Defendants have not received any written discovery about these new opinions and data, nor had the chance to depose experts who proffer these new declarations about their content. Nor could Defendants do so without reopening discovery and significantly postponing the trial. Accordingly, the opinions and assertions in the declarations attached to Plaintiffs’ Response should be disregarded. This rule clearly applies not only to trial, but also to motions to exclude and for summary judgment. Fed. R. Civ. P. 37(c)(1) (“if a party fails to provide information or identify a witness as required by Rule 26(a) or 26(e), the party is not allowed to use that information or witness to *supply evidence on a motion*, at a hearing, or at a trial” (emphasis added)); *see also Honaker v. Innova, Inc.*, 2007 WL 1217742, at *2 (W.D. Ky. Apr. 23, 2007) (“[W]hen a party fails to make Rule 26 disclosures, and those failures are not harmless, the party may not use the non-disclosed evidence ‘at a trial, a hearing, *or on a motion*.’” (emphasis added)); *Palmer*, 2007 WL 2254343, at **2–4 (same).

Without the improper expert assertions proffered for the first time in their opposition, Plaintiffs offer nothing to refute Defendants' showing that the opinions of Plaintiffs' experts are unreliable. On that basis alone, this Court should grant Defendants' motion to exclude the testimonies of Plaintiffs' experts regarding surface water bacterial levels.

II. The Opinions of Plaintiffs' Experts on Bacterial Enumeration are Unreliable and Should be Excluded

Even if the Court considers Plaintiffs' post-hoc expert rationalizations, none of them is availing. As explained in Defendants' Motion, the maximum 6-hour hold time set by EPA, USGS, and ODEQ when testing surface waters for *E. coli*, fecal coliform, total coliform, and *enterococcus* "is critical to the production of valid results," Mot. Ex. 5, EPA Enumeration Methods at 4, because this holding time minimizes changes in the density and consistency of bacteria in samples, changes that can skew test results, Mot. Ex. 7, USGS Field Manual at 7.1.2.D. *See* Mot. at 5–6. The evidence highlighted by Plaintiffs confirms as much. *See* Resp. at 5. Different types of bacteria respond differently to varied environmental conditions, so the longer a sample of water sits after it has been taken, the less it resembles the condition of the water at the time of the sampling. For example, the study underlying EPA's, USGS's, and ODEQ's decision to adopt a 6-hour hold time, according to Plaintiffs, showed both an increase and decrease in different bacteria concentrations among samples held for a 24-hour period. *Id.* The authors of the study recommended a 6-hour hold time for the very reason that fewer samples showed a fluctuation in bacteria growth when the samples were subjected to a shorter hold time, *id.*, confirming EPA's, USGS's, and ODEQ's conclusion that a 6-hour hold time ensures the validity of test results by removing deviations in density or consistency that can skew results.

In an effort to justify their deviation from long-established, mandatory testing standards, Plaintiffs argue that the 6-hour hold time set down by EPA, USGS, and ODEQ does not apply

here because this mandatory hold time is only to be used “for regulatory and compliance purposes.” Resp. at 10. This argument is baffling. According to Plaintiffs, the express purpose for which Plaintiffs wish to offer their bacterial analyses is to show “the percentage of samples that exceeded State and federal water guidelines.” Resp. at 2, 10. In other words, Plaintiffs conducted these tests for the sole purpose of informing the jury or the Court that bacterial levels allegedly exceeded proper regulatory standards in certain waterbodies at certain times. *Compare* Resp. Ex. 1, ¶ 4 (stating that these analyses are to support the expert testimony of Dr. Teaf), *with* Mot. at 2 (illustrating Dr. Teaf’s conclusion that testing results exceeded Oklahoma standards and “health-based screening level[s]”). Indeed, the Court has already heard several days of testimony from Plaintiffs’ experts about the regulatory levels established for bacterial levels in water, the alleged significance of those regulatory standards for human health, and how the results of Plaintiffs’ tests measure up against those standards. Because Plaintiffs’ Response concedes that the EPA, USGS, and ODEQ 6-hour hold time applies to testing of water for compliance with regulatory standards, the Court should exclude any tests that violate the hold time, as well as the expert opinions that explain those tests and the related regulatory standards.

It is of no moment that Plaintiffs want to use their non-compliant tests to inform the Court and the jury about whether the IRW’s waters comply with regulatory standards (rather than actually submitting their results to a regulatory body). Contrary to Plaintiffs’ argument, the standards for reliability in federal court are not lesser than those used for compliance reporting purposes. Merely because Plaintiffs wish to show in the context of *this litigation* that bacterial concentrations exceeded regulatory compliance standards, their experts are not excused from applying the same scientific rigor required for regulatory compliance outside of this litigation. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999) (court must ensure that an expert

“employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field”).

Nonetheless, Plaintiffs next contend that longer hold times are permitted in the non-regulatory setting, relying predominately on the American Public Health Association’s *Standard Methods for the Examination of Water and Wastewater* 2005 (“*Standard Methods*”). *E.g.*, Resp. at 11. Plaintiffs’ Response quotes *Standard Methods* only selectively, and the result is misleading. This publication sets an outer limit on all hold times for testing water samples, stating that “for non-regulatory purposes, do not hold for more than 24 h.” Ex. 12 at 3 (*Standard Methods* § 9060B); *id.* at 4 (“Hold samples at <8°C during transport and until time of analysis for no more than 24 h”). Yet, Plaintiffs principal expert on hold times states that “most analyses were set up ... 24 hours *or more* after the samples were collected.” Resp. Ex. 1, ¶ 3 (emphasis added). Indeed, there are numerous examples of Plaintiffs holding water samples for 3 days (72 hours) to 9 days (216 hours), and even as long as *34 days (816 hours)* prior to the start of testing.² See Ex. 2 (3 days between sampling and receipt); Ex. 3 (4 days between sampling and receipt); Ex. 4 (4 days between sampling and receipt); Ex. 5 (4–10 days between sampling and receipt); Ex. 6 (6 days between sampling and receipt); Ex. 7 (6–13 days between sampling and receipt); Ex. 8 (7 days between sampling and receipt); Ex. 9 (9 days between sampling and receipt); Ex. 10 (13 days between sampling and receipt); Ex. 11 (34 days between sampling and

² Contrary to Plaintiffs’ assertion, Defendants have not exaggerated the actual hold times at issue. Resp. at 12–13. Defendants calculated hold times based on the date and time samples were obtained until the date and time of their receipt by EML. Plaintiffs try to fault Defendants for separately calculating the period samples were held before analysis. However, Plaintiffs nowhere attempt to refute the fact that EPA, USGS, and ODEQ set two separate hold times – one for the transport period and a separate one for the period until samples were analyzed. Mot. at 5. Plaintiffs’ experts violated both. *Id.* at 7.

receipt).³ But, as Dr. Olsen testified, none of the samples were excluded from Plaintiffs' analyses. Mot. at 7.

The error here is all the more egregious because *Standard Methods*—Plaintiffs' preferred publication—specifically states that “special means” should be used “to deliver the samples to the laboratory within the specified time limits” “[i]f results may be used in legal action.” Ex. 12 at 3 (*Standard Methods* § 9060B). Rather than demonstrating the extra care recommended when tests may be used in litigation, Plaintiffs' experts accepted testing samples that disregarded even *Standard Methods*' hold-time standards by orders of magnitude without qualifying or limiting their opinions in the slightest. Ultimately, the analyses conducted by Plaintiffs' experts are inherently unreliable. Plaintiffs cannot offer any post-hoc rationalization to justify undifferentiated analyses based on testing samples with holding times ranging from 24 to 816 hours, especially in light of EPA's, USGS's, and ODEQ's 6-hour standard.

Finally, Plaintiffs argue strenuously that longer hold times will have the overall effect of lowering bacterial concentrations, skewing the results in Defendants' favor. Resp. at 11. The problem is not whether any deficiency inures to Plaintiffs' or Defendants' favor, but that the methodology employed by Plaintiffs' experts is inherently unreliable. By Plaintiffs' own account, longer hold times tend to create unpredictable deviations in test samples, supporting EPA's, USGS's, and ODEQ's determination that it “is critical to the production of valid results” that the 6-hour hold time is adhered to. Mot. Ex. 5, EPA Enumeration Methods at 4. Indeed,

³ To avoid burdening the Court, Defendants have selected only a handful of the chain of custody forms Plaintiffs produced that show Plaintiffs' experts failed to comply with the 6-hour hold time. As noted above, Dr. Myoda has analyzed all of Plaintiffs' forms and concluded that 72% of Plaintiffs' samples were tested in violation of this hold time. Defendants can submit additional examples as needed. Plainly, the evidence, as well as the statements by Plaintiffs and their experts, contradict Plaintiffs' assertion to this Court that the “standard operating procedure” requiring “‘samples for bacteria analyses ... be shipped overnight on the day they are collected’” “was consistently followed.” Resp. at 3.

Plaintiffs (and their experts) highlight the overall decrease in bacterial concentration only by ignoring the evidence that certain bacterial concentrations actually *increased* under a longer hold time. *See, e.g.*, Resp. at 5 (noting 3.5% of the samples showed an increase in bacteria under a 24-hour hold time). Of course, it is not possible to know in any sample which types of bacteria increased while the others decreased, which is why EPA, USGS, and the State of Oklahoma drew a bright line at 6 hours, after which the reliability of the bacterial testing could not be assured.

The importance of following the EPA, USGS, and ODEQ standard is further illustrated by the documented variations that occurred as Plaintiffs kept their water samples for days or weeks before starting the bacterial testing. Plaintiffs experts apparently disregarded *Standard Method*'s admonition to "[v]erify and record sample temperature upon receipt either through the use of a control water sample bottle or infrared thermometer." Ex. 12 at 3 (*Standard Method* § 9060B). There is no indication that Plaintiffs' experts tested the actual temperature of each sample. Indeed, the fact that several of Plaintiffs' chain of custody documents from the Northwind laboratory reveal notations that the ice had melted or that the sample containers appeared warm draws into question whether samples were in fact always received with acceptable amounts of ice. *See* Ex. 13 (sample chain of custody documents); *see also* Resp. at 4. Of course, warm samples will foster (not retard) bacterial growth, skewing the results and suggesting that the sampled waters contained more bacteria than were in fact present at the time the sample was taken.

CONCLUSION

For all the reasons stated herein and in their Motion, Defendants respectfully request that the Court exclude all expert testimony relying on bacterial enumeration testing conducted in violation of the EPA, USGS, and ODEQ hold times.

Respectfully submitted,

BY: /s/ Jay T. Jorgensen

Thomas C. Green
Mark D. Hopson
Jay T. Jorgensen
Gordon D. Todd
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005-1401
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

-and-

Robert W. George
Vice President & Associate General Counsel
Bryan Burns
Timothy T. Jones
Tyson Foods, Inc.
2210 West Oaklawn Drive
Springdale, Ark. 72764
Telephone: (479) 290-4076
Facsimile: (479) 290-7967

-and-

Michael R. Bond
KUTAK ROCK LLP
Suite 400
234 East Millsap Road
Fayetteville, AR 72703-4099
Telephone: (479) 973-4200
Facsimile: (479) 973-0007

-and-

Patrick M. Ryan, OBA # 7864
RYAN, WHALEY & COLDIRON, P.C.
119 N. Robinson
900 Robinson Renaissance
Oklahoma City, OK 73102
Telephone: (405) 239-6040
Facsimile: (405) 239-6766

ATTORNEYS FOR TYSON FOODS, INC.;

**TYSON POULTRY, INC.; TYSON
CHICKEN, INC; AND COBB-VANTRESS,
INC.**

BY: /s/James M. Graves

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

Woodson W. Bassett III
Gary V. Weeks
James M. Graves
K.C. Dupps Tucker
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, AR 72702-3618
Telephone: (479) 521-9996
Facsimile: (479) 521-9600

-and-

Randall E. Rose, OBA #7753
George W. Owens
OWENS LAW FIRM, P.C.
234 W. 13th Street
Tulsa, OK 74119
Telephone: (918) 587-0021
Facsimile: (918) 587-6111

**ATTORNEYS FOR GEORGE'S, INC. AND
GEORGE'S FARMS, INC.**

BY: /s/ A. Scott McDaniel

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

A. Scott McDaniel, OBA #16460
Nicole M. Longwell, OBA #18771
Philip D. Hixon, OBA #19121
MCDANIEL, HIXON, LONGWELL
& ACORD, PLLC
320 South Boston Ave., Ste. 700
Tulsa, OK 74103
Telephone: (918) 382-9200
Facsimile: (918) 382-9282

-and-

Sherry P. Bartley
MITCHELL, WILLIAMS, SELIG,

GATES & WOODYARD, PLLC
425 W. Capitol Avenue, Suite 1800
Little Rock, AR 72201
Telephone: (501) 688-8800
Facsimile: (501) 688-8807

**ATTORNEYS FOR PETERSON
FARMS, INC.**

BY: /s/ John R. Elrod

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

John R. Elrod
Vicki Bronson, OBA #20574
P. Joshua Wisley
CONNER & WINTERS, L.L.P.
211 East Dickson Street
Fayetteville, AR 72701
Telephone: (479) 582-5711
Facsimile: (479) 587-1426

-and-

Bruce W. Freeman
D. Richard Funk
CONNER & WINTERS, L.L.P.
4000 One Williams Center
Tulsa, OK 74172
Telephone: (918) 586-5711
Facsimile: (918) 586-8553

**ATTORNEYS FOR SIMMONS FOODS,
INC.**

BY: /s/ Robert P. Redemann

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

Robert P. Redemann, OBA #7454
PERRINE, MCGIVERN, REDEMANN,
REID, BERRY & TAYLOR, P.L.L.C.
Post Office Box 1710
Tulsa, OK 74101-1710
Telephone: (918) 382-1400
Facsimile: (918) 382-1499

-and-

Robert E. Sanders
Stephen Williams
YOUNG WILLIAMS P.A.
Post Office Box 23059
Jackson, MS 39225-3059
Telephone: (601) 948-6100
Facsimile: (601) 355-6136

**ATTORNEYS FOR CAL-MAINE FARMS,
INC. AND CAL-MAINE FOODS, INC.**

BY: /s/ John H. Tucker

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

John H. Tucker, OBA #9110
Theresa Noble Hill, OBA #19119
RHODES, HIERONYMUS, JONES, TUCKER &
GABLE, PLLC
100 W. Fifth Street, Suite 400 (74103-4287)
P.O. Box 21100
Tulsa, Oklahoma 74121-1100
Telephone: (918) 582-1173
Facsimile: (918) 592-3390

-and-

Delmar R. Ehrich
Bruce Jones
Krisann C. Kleibacker Lee
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600
**ATTORNEYS FOR CARGILL, INC. AND
CARGILL TURKEY PRODUCTION, LLC**

CERTIFICATE OF SERVICE

I certify that on this 19th day of June, 2009, I electronically transmitted the attached document to the court's electronic filing system, which will send the document to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Tina L. Izadi, Assistant Attorney General	tina_izadi@oag.state.ok.us
Daniel Lennington, Assistant Attorney General	daniel.lennington@oak.ok.gov

Douglas Allen Wilson	doug_wilson@riggsabney.com,
Melvin David Riggs	driggs@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
David P. Pagedpage@riggsabney.com	
Riggs Abney Neal Turpen Orbison & Lewis	

Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
Riggs Abney	

J. Randall Miller	rmiller@mkblaw.net
-------------------	--------------------

Louis W. Bullock	lbullock@bullock-blakemore.com
------------------	--------------------------------

Michael G. Rousseau	mrousseau@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com
Motley Rice LLC	

Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com

Motley Rice

COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen	sjantzen@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	

Mark D. Hopson
Jay Thomas Jorgensen
Timothy K. Webster
Gordon D. Todd
Sidley Austin LLP

mhopson@sidley.com
jjorgensen@sidley.com
twebster@sidley.com
gtodd@sidley.com

Robert W. George

robert.george@tyson.com

Michael R. Bond
Erin Walker Thompson
Kutak Rock LLP

michael.bond@kutakrock.com
erin.thompson@kutakrock.com

COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

R. Thomas Lay
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin
Lathrop & Gage, L.C.

jgriffin@lathropgage.com

COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

rredemann@pmrlaw.net
lzingue@pmrlaw.net
dsenger@pmrlaw.net

Robert E. Sanders
E. Stephen Williams
Young Williams P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens
Randall E. Rose
The Owens Law Firm, P.C.

gwo@owenslawfirm.com
rer@owenslawfirm.com

James M. Graves
Gary V. Weeks
Paul E. Thompson, Jr.
Woody Bassett
Jennifer E. Lloyd
Bassett Law Firm

jgraves@bassettlawfirm.com
pthompson@bassettlawfirm.com
wbassett@bassettlawfirm.com
jlloyd@bassettlawfirm.com

COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod
Vicki Bronson
P. Joshua Wisley

jelrod@cwlaw.com
vbronson@cwlaw.com
jwisley@cwlaw.com

Conner & Winters, P.C.

Bruce W. Freeman
D. Richard Funk
Conner & Winters, LLLP
COUNSEL FOR SIMMONS FOODS, INC.

bfreeman@cwlaw.com

John H. Tucker
Leslie J. Southerland
Colin H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker & Gable

jtuckercourts@rhodesokla.com
ljsoutherlandcourts@rhodesokla.com
chtucker@rhodesokla.com
thillcourts@rhodesokla.com

Terry W. West
The West Law Firm

terry@thewesetlawfirm.com

Delmar R. Ehrich
Bruce Jones
Krisann Kleibacker Lee
Todd P. Walker
Faegre & Benson LLP

dehrich@faegre.com
bjones@faegre.com
kklee@baegre.com
twalker@faegre.com

COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

Michael D. Graves
D. Kenyon Williams, Jr.
COUNSEL FOR POULTRY GROWERS

mgraves@hallestill.com
kwilliams@hallestill.com

William B. Federman
Jennifer F. Sherrill
Federman & Sherwood

wfederman@aol.com
jfs@federmanlaw.com

Charles Moulton
Jim DePriest
Office of the Attorney General

charles.moulton@arkansag.gov
jim.depriest@arkansasag.gov

COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION

Carrie Griffith
COUNSEL FOR RAYMOND C. AND SHANNON ANDERSON

griffithlawoffice@yahoo.com

Gary S. Chilton
Holladay, Chilton & Degiusti, PLLC

gchilton@hcdattorneys.com

Victor E. Schwartz
Cary Silverman
Shook, Hardy & Bacon, LLP

vschwartz@shb.com
csilverman@shb.com

Robin S. Conrad
National Chamber Litigation Center, Inc.
**COUNSEL FOR AMICI CURIAE CHAMBER OF COMMERCE FOR THE U.S. AND
THE AMERICAN TORT REFORM ASSOCIATION**

rconrad@uschamber.com

Richard C. Ford
LeAnne Burnett
Crowe & Dunlevy
COUNSEL FOR AMICUS CURIAE OKLAHOMA FARM BUREAU, INC.

fordr@crowedunlevy.com
burnettl@crowedunlevy.com

M. Richard Mullins
McAfee & Taft

richard.mullins@mcafeetaft.com

James D. Bradbury
James D. Bradbury, PLLC
**COUNSEL FOR AMICI CURIAE TEXAS FARM BUREAU, TEXAS CATTLE
FEEDERS ASSOCIATION, TEXAS PORK PRODUCERS ASSOCIATION AND TEXAS
ASSOCIATION OF DAIRYMEN**

jim@bradburycounsel.com

I also hereby certify that I served the attached documents by United States Postal Service,
proper postage paid, on the following who are not registered participants of the ECF System:

J.D. Strong
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118
COUNSEL FOR PLAINTIFFS

Dustin McDaniel
Justin Allen
Office of the Attorney General of Arkansas
323 Center Street, Suite 200
Little Rock, AR 72201-2610
**COUNSEL FOR THE STATE OF
ARKANSAS AND THE ARKANSAS
NATURAL RESOURCES COMMISSION**

/s/ Jay T. Jorgensen